IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

WRS, INC., d/b/a WRS MOTION PICTURE LABORATORIES, a corporation, Plaintiff, v. PLAZA ENTERTAINMENT, INC., a corporation, ERIC PARKINSON, an individual, CHARLES BERNUTH, an individual, and JOHN HERKLOTZ, an individual, Defendants.	: : : : : : : : : : : : : :	CIVIL ACTION NO. 00-2041

DEFENDANT HERKLOTZ'S MOTION FOR SUMMARY JUDGMENT OR, ALTERNATIVELY, MOTION FOR PARTIAL SUMMARY JUDGMENT

Defendant, JOHN HERKLOTZ, by his attorneys, BURNS, WHITE & HICKTON, LLC, sets forth the following Motion for Summary Judgment or, alternatively, Motion for Partial Summary Judgment:

FACTS

I. Introduction

1. On October 22, 2003[1], Plaintiff WRS, Inc. ("WRS"), a videotape manufacturing and duplicating company, filed this action against Plaza Entertainment, Inc. for alleged breach of an agreement to pay WRS for the

[1] The procedural history of this action is extensive. For purposes of this Motion, defendant Herklotz limits the recounting of procedural history to those pleadings and events relevant to summary judgment.

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reproduction of videotapes. The claim against Defendant John Herklotz is stated as a breach of guaranty contract action based upon his alleged personal guaranty for the debt of Co-Defendant Plaza Entertainment, Inc. ("Plaza").

2. Also named as Defendants are Plaza executives, Eric Parkinson ("Defendant Parkinson") and Charles von Bernuth ("Defendant Bernuth").

3. Defendant Herklotz filed an Answer and Affirmative Defenses to Plaintiff's Complaint.

4. On November 15, 2005 and January 23, 2006, the deposition of WRS's President and designated corporate representative, Jack Napor, was taken, and discovery in this matter is now closed.

5. There are no genuine issues of material fact that remain to be decided by a fact finder as to the discharge of Defendant Herklotz's alleged personal guaranty for the obligations of Plaza to WRS or WRS's failure to reasonably prove damages.

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II. The Breach of Contract Claims

6. In 1996, Defendant Eric Parkinson formed Plaza Entertainment, Inc., to engage in the commercial exploitation of various film and video titles through licenses, assignments or other transfer rights granted to it by the producers or other owners of the copyrights of various film and video titles. (Complaint, ¶ 9).

7. Parkinson obtained for Plaza the rights to duplicate, distribute and exploit a series of video titles (Complaint, ¶¶ 10 and 11).

8. Also in 1996, Plaza began a business relationship with WRS. (Napor Deposition, p. 73:9-16) (For the Court's convenience, the relevant excerpted pages of Jack Napor's deposition transcript are collectively attached to this Motion as Exhibit "A").

9. By April 1998, WRS had performed a significant amount of work for Plaza for which it had not been fully paid. (Napor Deposition, pp. 77-78, 79:10-25).

10. On or about April 29, 1998[2], Plaza submitted an order to WRS for dubs of a video entitled "Giant of Thunder Mountain." (WRS' Answers to Interrogatory Nos. 1 and 2; Napor Deposition, p. 76:17-25). Plaza requested that WRS perform the dubbing and fulfillment services on a credit basis.

11. WRS was allegedly unwilling to extend additional credit to Plaza unless Plaza paid its past due balance, updated its credit application, provided additional collateral, and executed a guaranty. (WRS Answer to Interrogatory No. 2; Deposition of Napor, pp. 81:8-25, 82:1-12).

12. On May, 6, 1998, Defendant Herklotz, provided his alleged personal guaranty of Plaza's debt to WRS to supply the duplication and fulfillment duties associated with the "Giant of Thunder Mountain" order on a credit basis. (Complaint, ¶ 17; Exhibit "B" of Complaint).

13. On July 24, 1998, Defendant Parkinson, acting as President and Chief Executive Officer of Plaza, submitted the updated account application required by WRS. (Complaint, ¶13). WRS alleges that it manufactured and delivered the videotapes to Plaza's customers. (Complaint, ¶ 14). However, according to Mr. Napor, WRS started duplicating tapes on Plaza's account at least as early as April 23, 1998, approximately 3 months before the application

[2] It is believed that the original purchase order was dated April 24, 1998, but was not submitted to WRS until April 29, 1998. On April 30, 1998, the order was increased. (Napor Deposition, p.82:1-18).

completed by Mr. Parkinson on behalf of Plaza. (Napor Deposition, p. 90:21-25 and p. 91:1-2.

14. Plaza failed to pay an unverified outstanding balance, and as of August 31, 1998, WRS was carrying a significant receivable amount on Plaza's account. (Complaint,¶¶ 19-20). However, discovery revealed that this amount contained charges dating back to at least January, 1997. (See Napor Deposition Exhibit 3, a WRS invoice to Plaza dated 3/31/97, attached hereto as Exhibit "B").

15. By October 1998, WRS was allegedly concerned about Plaza's failure to make payments for past due services. In order "to induce WRS to continue to provide duplication and fulfillment services to Plaza," WRS required Plaza's then-current executives, Defendants Parkinson and von Bernuth and Thomas Gehring, a third non-party principal, to enter into a "Services Agreement." (Complaint, ¶ 21; Napor Deposition, pp. 121:10-25, 122, 123:2-8).

16. The Services Agreement, further discussed in this Motion, provided for a relinquishment of certain aspects of Plaza's managerial control to WRS and additional security interests, conditions never contemplated by Defendant Herklotz's May 6, 1998 guaranty. WRS has not established that Defendant Herklotz had any knowledge of this new agreement between WRS and Plaza that materially altered the risk Defendant Herklotz allegedly assumed by virtue of his guaranty.

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17. Despite Plaza's failure to pay its obligations, WRS continued to provide duplication and fulfillment services to Plaza, as well as collection efforts on behalf of Plaza. (Napor Deposition, p. 152:8-23).

III. The October 12, 1998 Services Agreement

18. Defendants Parkinson and von Bernuth and Thomas Gehring, a third, non-party principal of Defendant Plaza, entered into a Services Agreement with WRS on October 12, 1998, after Plaza failed to pay its outstanding balance for manufacturing, dubbing and fulfillment services. Unlike the Account Application / Credit Application for which Defendant Herklotz provided the alleged personal guaranty, the Services Agreement provided for a fundamentally different relationship between WRS and Plaza.

19. Paragraph A of the Services Agreement provides:

> A. Plaza and WRS have an existing manufacturing and business relationship, and Plaza has immediate need for (i) working capital financing ("Financing") and (ii) certain administrative services, including, generation of sales invoices, collections of amounts receivables [sic], performance of general accounting and related record keeping functions, monitoring and maintenance of inventories of packaging, finished goods, returns processing and repackaging (collectively, the "Administrative Services").

20. By virtue of the Services Agreement, WRS became "Plaza's exclusive agent" to perform the above-outlined duties, previously performed by Plaza itself, in addition to the production services WRS was already performing.

21. Moreover, Section 1 of the Services Agreement provided that Plaza would pay WRS's out-of-pocket expenses for administrative services, plus a $5,000.00 monthly fee for services, including the maintenance of a "lock box" account.

22. WRS and Plaza's documents, for which WRS was responsible pursuant to the Services Agreement, are missing, have not been produced, or were never created in the first instance. Examples include the following:

a. Plaza's earliest purchase orders with WRS, detailing the quantities ordered, the titles duplicated and the Plaza customers to whom they were shipped, were not kept after production (Napor Deposition, pp. 66:12-25, 67:1-21);

b. Mr. Napor estimates that the volume of business that WRS performed for Plaza prior to the July 24, 1998 date cited in the Complaint was *approximately* $121,000, but *could have been* more. (Napor Deposition p. 74:8-22) [Emphasis added];

c. WRS has not produced or cannot produce any document indicating that an account receivable was owed to WRS by Plaza as of July 24, 1998, the date of the submission of the updated Account Application/ Credit Application upon which the instant lawsuit is premised. "[W]e can't find what you're asking for in July." (Napor Deposition, pp. 77:16-25, 78:2-25);

d. WRS cannot ascertain whether Plaza's account balance as of August 31, 1998, the date designated by the July 24, 1998 Account Application when Plaza

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was to fully pay its outstanding balance, was $685,379 as pleaded in the Complaint or $720, 679 as indicated on an August 31, 1998 Account Statement marked as Napor Deposition Exhibit No. 4 (attached to this Motion as Exhibit "C");

e. Explaining reasons why so many records are not provided or cannot be located, Mr. Napor stated, "Over the time, and we haven't been a fully functional business, ... [S]omewhere along the line we have lost track of some paperwork because I remember it being much more voluminous that we have now, but I also don't think there was anything germane. I think we have all the important stuff here." (Napor Deposition, pp. 107:23-24, 108:4-10);

f. August 26, 2001 *Pittsburgh Post Gazette* interview of Jack Napor regarding WRS record keeping problems (attached to this Motion as Exhibit "D");

g. Mr. Napor, whose knowledge is imputed to WRS by virtue of his corporate designee status, stated that he had no understanding of the total amount of money that was deposited into a lock box account. (Napor Deposition, pp. 144:3-6, 198:7-25, 199:2-3);

h. When asked to produce all documents demonstrating that WRS billed Plaza during the seventeen (17) month period that WRS performed administrative services rendered pursuant to the Services Agreement, WRS states there were "none." See WRS's Response to Request No. 5 of Defendant Herklotz's Second Request for Production of Documents; and

i. Beginning in January 2000, problems with WRS's new computer software system resulted in frequent errors including: over billing and under billing clients and adding 0's unpredictably to either the quantity of products ordered or the unit prices, inflating the value of the invoices. (Napor Deposition, pp. 226:11-25, 227:2-13).

23. The Services Agreement, primarily through WRS's collection efforts and administering of a lock box as set forth in Sections 1 and 1.1 of the Services Agreement, was meant to facilitate payment of Plaza's debts to WRS and to keep better track of Plaza's records. (Napor Deposition, pp. 127:22-25, 128:1-10).

24. Instead, the Services Agreement compounded Plaza's debt to WRS, materially increasing Defendant Herklotz's risk, and caused WRS to further confuse record keeping such that Plaza's obligations to WRS cannot be reasonably calculated.

ARGUMENT

I. The October 12, 1998 Services Agreement Materially Modified the Creditor-Debtor Relationship, Substantially Increasing Herklotz's Risk, Thereby Discharging His Obligation.

27. Initially, the terms "suretyship" and "guaranty" must be defined and clarified. 8 P.S. § 1 states in full:

> Every written agreement hereafter made by one person to answer for the default of another shall subject such person to the liabilities of suretyship, and shall confer upon him the rights incident thereto, unless such agreement shall contain in substance the words: "This is not intended to be a contract of suretyship," or unless each portion of such agreement intended to modify the rights and liabilities of suretyship shall contain in substance the words: "This portion of the agreement is not intended to impose the liability of suretyship."

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28. The May 6, 1998 document signed by Defendant Herklotz is properly a suretyship in that the document does not contain the above-referenced statutory language.

29. Further, WRS alleges that Defendant Herklotz executed a suretyship for Plaza's outstanding debt as an additional inducement to WRS to supply duplication and fulfillment services on a credit basis.

30. There is no allegation that Defendant Herklotz was compensated by Plaza or anyone else for executing the suretyship agreement at issue in this matter. Defendant Herklotz is therefore a " gratuitous surety".

31. Pennsylvania courts have consistently differentiated between gratuitous (uncompensated) sureties and compensated sureties. J.F. Walker Co., Inc. v. Excalibur Oil Corp., Inc., 792 A.2d 1269 (Pa. Super. 2002).

32. "Where, without the surety's consent, there has been a material modification in the creditor-debtor relationship, a gratuitous surety is completely discharged." Continental Bank v. Axler, 510 A.2d 726, 729 (Pa. Super. 1986).

33. A material modification in the creditor-debtor relationship consists of a significant change in the principal debtor's obligation to the creditor that in essence substitutes an agreement substantially different from the original agreement on which the surety accepted liability. Continental Bank, at 729.

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34. Defendant Herklotz executed the suretyship agreement on May 6, 1998.

35. Defendant Herklotz's suretyship agreement did not waive increased risk of the surety, and in fact does not contain the words "increased risk".

36. Plaza allegedly defaulted sometime after Defendant Herklotz executed the suretyship document.

37. Without notice to Defendant Herklotz, WRS and Plaza principals entered into a "Services Agreement" on October 12, 1998 that materially changed the creditor-debtor relationship.

38. Pursuant to the Services Agreement, WRS agreed to perform management duties including, administering collection services, restocking services, generating sales invoices, monitoring and maintenance of bank accounts and a "lock box". Plaza relinquished control of its ability to recoup profits to pay its debts.

39. Also pursuant to the Services Agreement, Plaza was now charged a $5000/monthly fee and all of WRS's out-of-pocket expenses for administrative services that Plaza had previously handled itself.

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40. The Services Agreement is a substantially different agreement than the original agreement between WRS and Plaza fundamentally changed the nature of the WRS-Plaza commercial relationship and in the process significantly increased Defendant Herklotz's risk.

41. Defendant Herklotz's suretyship agreement never contemplated that, without notice to him, Plaza's debts would be compounded by WRS's managerial control of Plaza and collection services on behalf of Plaza.

42. Defendant Herklotz has met the requirements for complete discharge of a gratuitous surety's obligation under Pennsylvania law, and as such, he is entitled to summary judgment.

43. In the event that this Court declines to fully discharge Defendant Herklotz's obligation, Defendant Herklotz respectfully requests the Court to limit his obligation to the amount owed by Plaza as of the date that Plaza first defaulted on its payments to WRS, if that date can be determined and the figure can be reasonably calculated on the basis of facts on the record, although Defendant Herklotz respectfully asserts that the date cannot be determined and the figure cannot be reasonably calculated.

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II. ***WRS's Alleged Damages Cannot Be Reasonably Calculated***

44. WRS' proof of damages is muddled and confused due to poor record keeping, failure to produce documentation, or inability to produce documentation because records were never maintained in the first instance.

45. WRS' damages cannot be reasonably calculated.

46. The Plaintiff in an action for breach of contract has the burden of proving damages resulting from the breach. Spang v. U. S. Steel Corporation, 545 A.2d 861 (Pa. 1988).

47. Further, as a general rule, damages are not recoverable if they are too speculative, vague or contingent and are not recoverable for loss beyond an amount that the evidence permits to be established with reasonable certainty. *Restatement (Second) of Contracts*, § 352; *Murray on Contracts*, § 226.

48. WRS cannot demonstrate the amounts owed by Plaza and when; an occasional invoice is not enough.

49. WRS has produced no report prepared by an accountant or forensic accountant who might provide an accurate determination of damages.

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50. WRS must come forward with an organized, documented and reasonable calculation of damages. WRS has failed to do so. As such, WRS cannot prove a material element of a breach of contract action.

WHEREFORE, for all of the foregoing reasons, Defendant Herklotz, respectfully requests that this Honorable Court sign the attached Order granting summary judgment in his favor on all counts against him as a matter of Pennsylvania law.

By: *John P. Sieminski*

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J. Napor - by Mr. Sieminski

telephone and say I have left Hemdale, I'm now with Plaza, I look forward to doing business with you in my role at Plaza? How did that happen?

A. Well, as I mentioned before I think that's what happened. It may have been that I stayed in touch with him, I don't recall, but I do believe, I think it is probable that he contacted us after he started a new company. I honestly don't recall that.

Q. What was the first order that you received, you, WRS, received from Plaza?

A. I don't remember that, but the orders started small. Whatever it was it was a modest amount of money. As they got new titles and as they started expanding the distribution their orders increased, but our collections on account started slowing down. The bigger they got they had cash flow issues.

Q. Are there any documents or set of documents that you are aware of that are either in this room or perhaps elsewhere where you would be able to reconstruct the first set of orders from Plaza in the sense of what titles

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J. Napor - by Mr. Sieminski

they were for, what were the quantities and to whom those orders were shipped?

MR. GIBSON: Can I interrupt? Some of the stuff here --

MR. REILLY: You can look at some of the stuff here that is available. Don't answer until you look.

A. As I understand your question I don't think there was any reason for us to know that. As far as, I mean, once the manufacturing is done the next stage is collection, and once the bill is paid if the bill is paid in full the computer deletes the invoice because there is no reason to keep that. There would have been lots of records but not organized the way you are asking about. I will take a look through here and see if there is anything I can --

MR. GIBSON: I think at the very end there was a letter back in 1996.

THE WITNESS: On the bottom of this?

MR. GIBSON: Yes, the very bottom, there were records back in June 1996

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J. Napor - by Mr. Sieminski

submitted to WRS an account application for the purpose of inducing WRS to provide duplication and fulfillment services to Plaza on a credit basis.

Do you see that statement in the Complaint?

A. Yes.

Q. By virtue of the letter that we just talked about where it appeared that the relationship between Plaza and WRS was established in August 1996 it appears that there was some commercial relationship that existed between WRS and Plaza prior to July 24, 1998?

A. Yes.

Q. Do you have any idea or concept of the volume of business that WRS did with Plaza between August 1996 and July 1998?

A. Someplace in these documents we have a statement. The March 31 statement shows that they had a balance of $66,000, so it would have been something in excess of that as a total amount of business over that time period.

Q. What year is the document that you

J. Napor - by Mr. Sieminski

are reading from?

A. 1997. This is dated March 31, 1997.

MR. SIEMINSKI: Let's mark that as Exhibit 3 please.

(Napor Exhibit No. 3 was marked for identification.)

Q. What I understand you to be saying in response to my question is that the volume of business had to be at least -- I was going to repeat the figure you gave me, but it appears that the total of this document Exhibit 3 is $121,000 and change?

A. I'm sorry, I was giving the current balance. Yes, that's correct, $121,972.

Q. Since that document is dated 1997 it would appear that the volume of business that WRS did with Plaza prior to July 24, 1998 was at least approximately $121,000?

A. Yes.

Q. Could have been more?

A. Yes.

Q. Doesn't appear that it could have been less based on the document you are holding?

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provide duplication and fulfillment services to Plaza on a credit basis.

My point is while you are looking through the documents it appears that Plaza was already doing a substantial amount of business -- I recognize substantial is subject to interpretation but $121,000 is fairly substantial -- and so Plaza was doing substantial business with WRS prior to July 24, 1998.

A. Yes.

Q. I'm trying to understand what the basis for account application was if in fact WRS already had an account open for Plaza as of July 24, 1998.

A. Well, again, I can't tell you if this is the first application. I can tell you that they did start small as a start-up operation and as they developed, as their business developed their business strung out because they were short on cash. They had a big job that they wanted to get done and maybe more than one job but they had John Herklotz's job, Giant of Thunder Mountain, and we are

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unwilling to provide any additional credit beyond what we had done without payment guarantees and additional documentation to protect us.

Q. So you asked Plaza to submit an account application, a copy of which is appended to the Complaint as Exhibit A?

A. My recollection is that we wanted to formalize what we were and put protections in place because we were running into larger amounts, larger credit amounts and credit requests, so whatever we had was not adequate to give us a comfort level to provide them any additional credit.

Q. As of July 1998 was there a substantial account receivable that was on your books that you were concerned about?

A. As of this statement, Exhibit 3, which was dated March --

MR. REILLY: That is '97. His question was --

A. Isn't that what we are talking about?

Q. Actually, I said as of July 1998.

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J. Napor - by Mr. Sieminski

Mr. Reilly's observation, which I'm happy to have you answer too, do you have any document that you can refer to to tell me whether there was an account receivable owed to WRS by Plaza as of July 1998 and if so what was that amount?

MR. REILLY: May I show him the Answers to Interrogatories which has the documents in it?

MR. SIEMINSKI: Sure.

A. Can you repeat the last question please.

(Last question read back.)

BY MR. SIEMINSKI:

Q. Sometimes the answer to a question is I don't know. Apparently this is one of those situations. I'm not trying to be overly negative, but we have three people now poring over an unorganized set of documents for ten minutes and nobody can find the answer to the question, so it may be here in this room and it is your recollection you don't have an answer to the question right now?

A. Okay. Yeah, we can't find what you are asking for in July.

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J. Napor - by Mr. Sieminski

Q. Of course the reason why I was pinning it to July is that that is a date that has some prominence in the Complaint which was filed on behalf of WRS, so I wanted to state that for the record.

What did WRS do in July 1998 or any time a month prior to that or a month after that to assess Plaza's creditworthiness?

A. We had made a decision that we weren't going to do any more work unless we got paid or unless we had significantly more collateral. That's my recollection.

Q. This is in the context of you had done some significant amount of business with Plaza prior to July 1998. There was some request whether it was tied to Giant of Thunder Mountain or otherwise for an order that was substantially larger than any prior single order by Plaza; is that right?

A. That's right, and also they had a balance that was behind. I don't know what the balance was in July, but it was a past due balance indicated in earlier statements in these documents.

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J. Napor - by Mr. Sieminski

dubs of the Giant of Thunder Mountain video? The reason I'm asking is in Interrogatory Answer No. 1 it would suggest that it was in May 1998 and Answer No. 2 suggests that it was April 1998 and I'm trying to establish when that occurred.

A. I am looking to see when we got the order, but the discussions preceded the order and the requirements for our accepting an order were that we had to be paid the old balance and be provided additional collateral. We could not extend and would not extend any more credit that are for that without being assured we were going to be paid.

Q. You have testified that there was a request to produce an order that was substantially in excess of prior orders and you had a concern about the prior balance.

Are you certain that that request was for duplication of Giant of Thunder Mountain? Are you certain of that?

A. Am I certain of what?

Q. That the request that caused you to have the prior balance paid off and provide

J. Napor - by Mr. Sieminski

additional collateral was associated with a request by Plaza to reproduce quantities of the Giant of Thunder Mountain video?

A. Yes, as well as to collect the past due balance, and the order it looks like that we finally entered here which has been talked about prior to the order coming in, it looks like it is dated April 29, 1998, actually the dubbing order was not generated until May 1, we may not have had the documentation at that time, their purchase order was dated April 24.

MR. REILLY: Look through that before you testify because there are a number of documents.

A. Here is another purchase order dated April 29. There was an increase on the purchase order dated April 30.

Q. Those are all Giant of Thunder Mountain?

A. Yes.

Q. Were there any other videos, any other titles in this time frame that Plaza was requesting reproduction of?

A. Probably, but nothing of this

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J. Napor - by Mr. Sieminski

services?

A. Either Joe Gerek or me.

Q. Anything of note in the documents that you are taking a look at?

A. The order was shipped it appears on the 23rd of April, but there is a note here from Plaza dated July 14. It says it is attached, so this would have been referring to a different order. That was not the screeners. This is attached to the wrong one.

Q. Jack, what quantity of video cassettes was shipped on April 23, 1998?

A. It looks like 10,000

Q. I take it we have to look through various invoices or shipment records to determine what videos were sent versus being able to refer to one document that would indicate that in sort of a spreadsheet form?

A. That's correct.

Q. As you had just indicated, it appears from a document that you are referring to now that there was approximately 10,000 Giant of Thunder Mountain videos shipped on April 23, 1998?

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A. That's correct.

Q. What was the amount that was billed for that or invoiced for those videos?

A. Invoice 117027.

MR. REILLY: That wouldn't be it. Wouldn't it show on there (indicating)?

THE WITNESS: Yes, it would.

Q. It appears that the earliest invoice on this printout is May 15, 1998.

A. Once an invoice was paid, then the computer takes them off just like credit statements, but if we have an earlier statement it might show that. I did see some statements somewhere. $18,924.77.

Q. What are you reading from?

MR. REILLY: What are you referring to?

A. I didn't hear your question.

Q. What document were you reading from?

A. Our statement of November 30, 1999.

Q. That refers back to the invoice?

A. Invoice for these 10,000 screeners of Giant of Thunder Mountain.

MR. REILLY: Does it show the

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were entitled to it. I think he in good conscience was looking to confirm what did he owe, and I think he was also looking for some reason why he didn't have to pay it, so I just made it available to him.

As I recall, he and his attorney were out there, the attorney was with him a day and a half or two days. John was there another day on his own and then he expected to stay there until he completed this, but then he said he had to go back to California for something and he would be back in a couple weeks and left all the stuff out.

That got delayed a couple times and I think his attorney came out one day. As I recall, I think it was the attorney was going to copy something, John may have, I don't remember, but again they were all things that could be manufactured. We knew what they were. There is no magic about these numbers and invoices and statements.

Over the time, and we haven't been a fully functional business, it is a 200,000 foot building with a lot of stuff in it and I have a

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handful of employees, we are liquidating equipment, consolidating accounts, cleaning up space so we can liquidate, and somewhere along the line we have lost track of some of the paperwork because I remember it being much more voluminous than we have now, but I also don't think there was anything in there that is germane. I think we have all the important stuff here.

Q. I honestly don't want to make this into an exercise of looking through documents for extended periods of time this afternoon --

A. I really appreciate that. Thank you, sir.

Q. -- but is there any document that you can put your hands on quickly here this afternoon that would indicate that as of August 31, 1998 Plaza owed a total of $685,379?

A. How about this one that actually shows that as of that date this $720,679?

MR. REILLY: What you are referring to is an account statement of August 31, 1998; is that right?

A. I think what happened is we picked

J. Napor - by Mr. Sieminski

Paragraph 19 of the Complaint a set of orders that reflect that, production work orders that reflect that, shipping orders perhaps that might reflect at least the number of videotapes that were attendant to that figure, and then finally there should be invoices that support that amount. Maybe all that documentation exists and maybe it is all in the room, but it is not here in one neat package and that's part of what I'm trying to get to.

A. The reason it is not part of one neat package, John, is that there were lot of people who have been through it including Mr. Herklotz and his attorney in the beginning, and this stuff has been shuffled back and forth and moved and disorganized and I haven't taken the time to put it in, and I thought once we gave you what you asked for perhaps one of your staff would have put it together sequentially by date.

We did provide copies of all the invoices and Plaza has received statements from the time this was going on, '97, '98, '99, 2000. If there were any questions of accuracy

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shipping things to?

A. I don't know all of them because I didn't look at all of them, but just thumbing through here it appears that these are invoices that were generated either by us or by Plaza to their customers. We must have done them.

Q. It shows Plaza Entertainment, Inc. located at 1,000 Napor Boulevard.

A. Yes. When Plaza was having trouble getting their records straight and collecting money and paying us and so forth and they were having trouble keeping their staff on is when we made the agreement to take over those services for them.

Q. I thought that was in 1998, October 1998 was the Services Agreement when you took over. Were there other invoices? The other invoices sent before that were apparently going out from Plaza and then the receipts were going to a lock box in California or WRS?

A. I think we are maybe talking about two different service agreements. One of them was an agreement that guaranteed we were going to get paid which Herklotz, von Bernuth and

Case 2:00-cv-02044 WLS Document 78-3 Filed 02/24/06 Page 17 of 26

J. Napor - by Mr. Gibson

Parkinson signed --

Q. In 1998?

A. -- in 1998 that we called the Services Agreement. Then when they asked us to take over the physical distribution, the fulfillment of their stuff, we were generating invoices and trying to collect money for them, and that is when the proceeds of that went into a lock box.

We had an account with Plaza and then we had a Plaza business if you will set up with this where when people would order Plaza's business at 1000 Napor Boulevard we would manufacture, ship and bill and the proceeds went into a lock box. The cost, and I don't remember the exact percentage, but the manufacturing costs came off the top and then we split the proceeds.

Q. Are we missing a subsequent agreement or is this all under the 1998 agreement?

A. I'm not sure there was a formal additional agreement for doing that. This is when earlier we were asking about how did that

Case 2:00-cv-02041-WLS Document 78-13 Filed 02/24/06 Page 18 of 26

J. Napor - by Mr. Gibson

happen and I had mentioned that Plaza said they had accounts receivable of $2.2 million that kept eroding every time we asked.

We said look, maybe we can help you with this and about a year later they said we are just not getting it done, why don't you do that.

At that point I sent a couple people to the West Coast to get those records and find out what was going on. They spent four or five days there doing this but the records were incomplete, disorganized, brought back what they could. They had a lot of pieces of it missing. Some of it was at Plaza's Fulfillment Center in Arkansas as I recall, but these invoices and statements were generated as a result of our helping them do that.

There was never anything like we were never able to collect or find anything like they represented was due, and we found that there were a lot of collection issues with their clients on some of the former alleged receivables.

Q. Going ahead to October 2000, that's

Case 2:00-cv-02041-WLS Document 78-3 Filed 02/24/06 Page 19 of 26

J. Napor - by Mr. Gibson

A. As part of this agreement when we took that over -- let me go back a couple of steps. Plaza had offices and operation sales offices and accounting and everything in Los Angeles. We manufactured in Pittsburgh and fulfilled orders, manufactured and shipped where they said. Overstock and returns went to Plaza's facility in Arkansas and Plaza was reshipping some of those returned goods from Arkansas to fulfill other orders.

MR. REILLY: Wait. Who sent the invoices out?

THE WITNESS: Plaza in all cases sent the invoices out.

MR. REILLY: And Plaza's customers paid Plaza?

THE WITNESS: That's correct.

MR. REILLY: If they paid at all?

THE WITNESS: Yes.

A. Then it got to a time where Plaza could no longer afford to maintain its own operation. They were having troubles keeping track of their records and mostly they couldn't

Case 2:00-cv-02041 WLS Document 78-3 Filed 02/24/06 Page 20 of 26

afford to pay the rent and keep their staff. They came to us and said look, would you do what we are doing here in the office, which we did, which was generating the invoice and collecting the money and the collections into the lock box. The lock box arrangement was that we got paid our manufacturing costs off the top and then we split 50/50, and those proceeds were put on the Plaza account.

MR. GIBSON: I will have more questions next time.

MR. SIEMINSKI: As will I. We are breaking for now to resume at a date to be agreed upon as mutually convenient.

(Signature waived.)

(Whereupon, the above-entitled matter was concluded at 4:35 p.m.)

Case 2:00-cv-02041-WLS Document 78-3 Filed 02/24/06 Page 21 of 26

J. Napor - by Mr. Sieminski

Q. Did you in any way, and when I say you I mean you, Jack Napor, and to your knowledge anyone at WRS, advise Mr. Herklotz that the Services Agreement was going to be entered into?

MR. REILLY: One reservation before you answer that question. That presupposes that they had a duty to do that or that advising somebody else on behalf of Herklotz is tantamount to advising him. The question as I understand it is did he personally or anybody else personally talk to Mr. Herklotz.

MR. SIEMINSKI: I understand your objection because it was set forth in interrogatory answers, so I follow that and that is on the record. You qualified it in a personal way that I don't necessarily want the question to be limited to.

MR. REILLY: Did Jack or anybody else at WRS talk to Mr. Herklotz?

MR. SIEMINSKI: Right.

BY MR. SIEMINSKI:

Q. Let me try to put it in plain

Case 2:00-cv-02041-WLS Document 78-3 Filed 02/24/06 Page 22 of 26

J. Napor - by Mr. Sieminski

was contemplated under this Agreement about returns and how returns were to be handled.

A. Well, returns processing typically worked for customers as I outlined. Again, in Plaza's case they had established this separate return center. I can't tell you whether this was standard just because that's what the business was all about and what was typical or whether that was a specific discussion of that here. I don't recall anything being a specific discussion. I think that was just routine, that's what happens.

Q. Was it the intent in nonlegal terms of this Agreement to essentially have WRS take over that portion of Plaza's business that related to the tapes that Plaza had asked WRS to reproduce?

A. I'm not sure I understand your question.

Q. There was a situation where Plaza had asked WRS to reproduce a large number of tapes.

A. Right.

Q. That was done. There was a

Case 2:00-cv-02041-WLS Document 78-3 Filed 02/24/06 Page 23 of 26

J. Napor - by Mr. Sieminski

Q. To anybody. I just want to understand why there would be a reference to Dovenet on this document.

A. I don't know. Where do you see Dovenet?

Q. Under the column Batch I.D.

A. I'm on a different page than you are.

Q. The first sheet after Answer to Interrogatory No. 1.

A. I don't know why it is on there, but Dovenet is the new software. MCBA is the old software, so it may have been prepared partially from each different system, the two systems.

Q. Does this document reflect invoice amounts? Is that what it purports to represent? Purchase order amounts, what are the figures that are reflected here?

A. These are sales invoice amounts.

Q. In the Amount Remaining column, is that intended to be a running total?

A. I believe that column is the outstanding amount on each invoice.

Case 2:00-cv-02044 JSS Document 78-3 Filed 02/24/06 Page 24 of 26

J. Napor - by Mr. Sieminski

Q. If we would look to the dates of the invoices, let me phrase it this way, if we were trying to understand the dates of the invoices themselves would we look to the document date that is in the left-hand column?

A. I believe that's the case, yes.

Q. If I was trying to understand invoices that were generated after the date for instance of the Services Agreement I would identify the date of the Services Agreement and then all of the invoices after that date would have been generated by WRS after the date of the Services Agreement; is that fair?

A. I think that's correct.

Q. If you page through then to the Answer to Interrogatory No. 16, it is the next set of documents --

A. Okay.

Q. -- that's in reference to a question or set of questions about the lock box account. In response to a couple of questions about the date and amount of each deposit to the lock box account and the date and amount of each disbursement from each account WRS set forth

J. Napor - by Mr. Gibson

EXAMINATION

BY MR. GIBSON:

Q. I just have a few quick ones. Your Interrogatories indicate the period of 17 months at $5,000 a month that you are due under the Services Agreement; is that correct?

A. Yes, but I don't believe any of those months have been billed and so none of them are reflected in the billings.

Q. What period of time were those 17 months, from the date of the Services Agreement forward 17 months?

A. Yes, that would be my --

Q. So October 1998 to roughly March 2000; would that be right?

A. February perhaps, but approximately.

Q. In your bankruptcy disclosure statement your counsel indicates there were problems with your software systems and manufacturing software and one another. The problems continued for an extended period of time including 17 months when WRS was unable to send clients statements of their accounts and

J. Napor - by Mr. Gibson

where account balances were sometimes in two or more independent and incompatible software systems.

What period of time was that 17 months?

A. From the time we went on the new system, which would have been January 2000, to sometime late spring 2001.

Q. Say May 2001?

A. Somewhere in that ballpark, yes. But again those computer issues have nothing to do with, couldn't possibly have anything to do with any of the accounts we are talking about here of Plaza. In fact, both at 17 months just happens to be a coincidence. There is no correlation between those or the time frames.

Q. Page 1 of the document that was attached to Answer to Interrogatory No. 1, it says Plaza Entertainment on the top and then it has listed Origin, Type, Document Number, Check Number, Due Date, Audit Trail Code, Batch I.D. and Currency I.D., and then down below it has Document Date, Description, Discount Amount, Writeoff Amount, Document

Case 2:00-cv-02041-WLS Document 78-4 Filed 02/22/2006 Page 1 of 1

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DATE OF STATEMENT: 03/31/97
SALESMAN NO.: WRS
CUSTOMER NO.: 124217

PLAZA ENTERTAINMENT
ATTN: ERIC PARKINSON
304 N EDINBURGH
LOS ANGELES, CA 90048

INDICATE AMOUNT OF REMITTANCE
$ ______

TERMS: Payment due 30 days from date of invoice. Past due invoices are subject to a 1½% per month interest charge which is an annual percentage charge of 18%.

INVOICE DATE	INVOICE NUMBER	CUSTOMER REFERENCE NUMBER	ORIGINAL TRANSACTION AMOUNT	CURRENT ITEMS	PAST DUE 31-60 DAYS OLD	PAST DUE 61-90 DAYS OLD	PAST DUE OVER 90 DAYS OLD
)1/31/97	6462	FINANCE CHARGE	104.16		104.16		
)2/28/97	6604	FINANCE CHARGE	825.18		825.18		
:2/27/96	144902	PO# 4511	51943.80				6943.80
)1/24/97	146256	PO# 4511	48068.20			48068.20	
)3/28/97	150931	PO# PARKINSON	52305.82	52305.82			
)3/28/97	150986	PO# 4511	13725.82	13725.82			

Exhibit 13
Witness [illegible]
Date 11-15-05 [illegible]
Powers Garrison & Hughes

REMARKS: 1
2
3

STATEMENT DATE ACCUMULATED TOTALS		CURRENT	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE
	03/31/97	66031.64	929.34	48068.20	6943.8

TOTAL AMOUNT DUE PLEASE PAY THIS AMOUNT: 121,972.9

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EXHIBIT
B

EXHIBIT C

99456

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DATE OF STATEMENT	08/31/98
SALESMAN NO. WRS	CUSTOMER NO. 124217

PLAZA ENTERTAINMENT
ATTN: ERIC PARKINSON
304 N EDINBURGH
LOS ANGELES, CA 90048

INDICATE AMOUNT OF REMITTANCE $ ________

TERMS: Payment due 30 days from date of invoice. Past due invoices are subject to a 1½ % per month interest charge which is an annual percentage charge of 18%.

INVOICE DATE	INVOICE NUMBER	CUSTOMER REFERENCE NUMBER	ORIGINAL TRANSACTION AMOUNT	CURRENT ITEMS	PAST DUE 31-60 DAYS OLD	PAST DUE 61-90 DAYS OLD	PAST DUE OVER 90 DAYS OLD
06/10/98	177373	PO# P QUINN	174.50			174.50	
06/16/98	177708	PO# 51498-1	634.65			634.65	
06/16/98	177710	PO# SEE BELOW	6019.52			6019.52	
06/24/98	178096	PO# N CORNMAN	2747.50			2747.50	
06/26/98	178742	PO# SEE BELOW	1653.12			1653.12	
06/26/98	179030	PO# SEE BELOW	1350.00			1350.00	
07/24/98	180945	PO# 71498-1	13352.56		13352.56		
08/12/98	181146	PO# N. CORNMAN	443.75	443.75			
08/14/98	181388	PO# SEE BELOW	776.80	776.80			
08/31/98	183063	PO# NOAH	2736.76	2736.76			
08/31/98	183064	PO# PL71498-1	78007.69	78007.69			
08/31/98	183065	PO# PL71498-1	6758.68	6758.68			
08/31/98	183066	PO# NOAH	1061.65	1061.65			
08/31/98	183189	PO# PL80598-1	16101.58	16101.58			

STATEMENT

Exhibit N/K
Witness WALTERS
Date 11-15-05 Rptr. VM
Powers Garrison & Hughes

REMARKS: 1
2
3

		CURRENT	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE
STATEMENT DATE ACCUMULATED TOTALS	08/31/98	105886.91	22444.67	21482.71	570864.86

TOTAL AMOUNT DUE PLEASE PAY THIS AMOUNT 720,679.15

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Case 2:00-cv-02041-WLS Document 79-15 Filed 02/22/2006 Page 2 of 14

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SALESMAN NO. WRS
CUSTOMER NO. 124217

PLAZA ENTERTAINMENT
ATTN: ERIC PARKINSON
304 N EDINBURGH
LOS ANGELES, CA 90048

INDICATE AMOUNT OF REMITTANCE $ ____________

TERMS: Payment due 30 days from date of invoice. Past due invoices are subject to a 1½% per month interest charge which is an annual percentage charge of 18%.

INVOICE DATE	INVOICE NUMBER	CUSTOMER REFERENCE NUMBER	ORIGINAL TRANSACTION AMOUNT	CURRENT ITEMS	PAST DUE 31-60 DAYS OLD	PAST DUE 61-90 DAYS OLD	PAST DUE OVER 90 DAYS OLD
05/15/98	175872	PO# N CORNMAN	22.00				22.00
05/15/98	175873	PO# SEE BELOW	3466.76				3466.76
05/15/98	175874	PO# SEE BELOW	3477.70				3477.70
05/15/98	175875	PO# SEE BELOW	11469.37				11469.37
05/15/98	175876	PO# SEE BELOW	316.48				316.48
05/15/98	175877	PO# SEE BELOW	587.02				587.02
05/15/98	175878	PO# SEE BELOW	1251.36				1251.36
05/15/98	175879	PO# SEE BELOW	2069.80				2069.80
05/15/98	175882	PO# SEE BELOW	4392.00				4392.00
05/15/98	175883	PO# SEE BELOW	15367.42				15367.42
05/15/98	175884	PO# SEE BELOW	426.80				426.80
05/18/98	176030	PO# SEE BELOW	3437.33				3437.33
05/18/98	176031	PO# SEE BELOW	3543.60				3543.60
05/18/98	176032	PO# SEE EBLOW	2684.29				2684.29
05/27/98	176645	PO# N KORNMAN	27.25				27.25
05/27/98	176668	PO# SEE BELOW	46097.91				46097.91
05/29/98	176813	PO# SEE BELOW	32128.56				32128.56
05/29/98	177023	PO# SEE BELOW	15150.77				15150.77
05/29/98	177025	PO# SEE BELOW	7584.77				7584.77
05/29/98	177026	PO# SEE BELOW	5673.77				5673.77
05/29/98	177027	PO# SEE BELOW	18924.77				18924.77
05/29/98	177037	PO# 51498-1	5757.26				5757.26
05/29/98	177041	PO# SEE BELOW	129207.05				129207.05
05/29/98	177042	PO# SEE BELOW	4086.84				4086.84
05/29/98	177168	PO# SEE BELOW	5825.13				5825.13
05/29/98	177186	PO# 51498-1	130.21				130.21

STATEMENT

REMARKS: 1
2
3

STATEMENT DATE ACCUMULATED TOTALS	CURRENT	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE

TOTAL AMOUNT DUE — PLEASE PAY THIS AMOUNT

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CUSTOMER NO. 124217

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304 N EDINBURGH
LOS ANGELES, CA 90048

INDICATE AMOUNT OF REMITTANCE $ ______

TERMS: Payment due 30 days from date of invoice. Past due invoices are subject to a 1½% per month interest charge which is an annual percentage charge of 18%.

INVOICE DATE	INVOICE NUMBER	CUSTOMER REFERENCE NUMBER	ORIGINAL TRANSACTION AMOUNT	CURRENT ITEMS	PAST DUE 31-60 DAYS OLD	PAST DUE 61-90 DAYS OLD	PAST DUE OVER 90 DAYS OLD
08/13/97	158889	PO# N CORNMAN	62.90				62.90
09/24/97	161013	PO# N CORNMAN	132.38				132.38
09/26/97	161818	PO# EP 825-1	18760.39				18760.39
09/26/97	161836	PO# EP909-1	9120.00				9120.00
09/26/97	161876	PO#	1289.44				1289.44
10/14/97	162350	PO#	15.50				15.50
10/14/97	162360	PO# PARKINSON	1859.75				1859.75
10/24/97	163461	PO# N CORNMAN	256.52				256.52
10/24/97	163738	PO# N CORNMAN	587.33				587.33
10/24/97	163745	PO# NC1013-1	609.50				609.50
11/10/97	163880	PO# NC-1022-1	3200.00				3200.00
11/24/97	164948	PO# N CORNMAN	64.84				64.84
11/24/97	164950	PO# N CORNMAN	664.57				664.57
11/28/97	165766	PO# NC1118-1	4281.46				4281.46
11/28/97	165902	PO# VARIOUS	3138.35				3138.35
02/10/98	169231	PO# NC-112-1	236.00				236.00
02/10/98	169365	PO#	83.63				83.63
02/12/98	169502	PO# PARKINSON	160.00				160.00
04/30/98	175557	PO# NC1030-1	1145.00				1145.00
04/30/98	175647	PO# SEE BELOW	24712.22				24712.22
05/15/98	175685	PO# SEE BELOW	89296.50				89296.50
05/15/98	175711	PO# SEE BELOW	66031.68				66031.68
05/15/98	175757	PO# N CORNMAN	656.68				656.68
05/15/98	175869	PO# N CORNMAN	27.75				27.75
05/15/98	175870	PO# N CORNMAN	27.75				27.75
05/15/98	175871	PO#	44.00				44.00

REMARKS: 1
2
3

STATEMENT DATE ACCUMULATED TOTALS	CURRENT	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE

TOTAL AMOUNT DUE PLEASE PAY THIS AMOUNT

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SALESMAN NO.: WRS
CUSTOMER NO.: 124217

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LOS ANGELES, CA 90048

INDICATE AMOUNT OF REMITTANCE $

TERMS: Payment due 30 days from date of invoice. Past due invoices are subject to a 1½% per month interest charge which is an annual percentage charge of 18%.

INVOICE DATE	INVOICE NUMBER	CUSTOMER REFERENCE NUMBER	ORIGINAL TRANSACTION AMOUNT	CURRENT ITEMS	PAST DUE 31-60 DAYS OLD	PAST DUE 61-90 DAYS OLD	PAST DUE OVER 90 DAYS OLD
08/29/97	1146	OPEN CREDIT ON	-1645.00				-1645.00
08/31/97	7462	FINANCE CHARGE	1259.86				1259.86
09/30/97	7608	FINANCE CHARGE	1260.80				1260.80
10/31/97	7743	FINANCE CHARGE	1700.34				1700.34
11/30/97	7880	FINANCE CHARGE	1750.27				1750.27
12/31/97	8010	FINANCE CHARGE	1920.51				1920.51
01/31/98	8142	FINANCE CHARGE	1920.51				1920.51
02/28/98	8284	FINANCE CHARGE	1920.51				1920.51
03/31/98	8415	FINANCE CHARGE	1927.70				1927.70
04/30/98	8544	FINANCE CHARGE	1927.70				1927.70
05/31/98	8679	FINANCE CHARGE	1715.56				1715.56
06/30/98	8811	FINANCE CHARGE	8903.42			8903.42	
07/31/98	8942	FINANCE CHARGE	9092.11		9092.11		
04/25/97	152492	PO# EP330-1	5811.77				265.14
04/25/97	152514	PO# PARKINSON	1030.36				517.50
05/30/97	154122	PO# PARKINSON	1311.06				287.50
05/30/97	154126	PO# PARKINSON	576.11				48.88
05/30/97	154130	PO# PARKINSON	47.24				12.50
05/30/97	154135	PO# NOAH	57.70				23.04
05/30/97	154139	PO# PARKINSON	102.85				12.50
05/30/97	154161	PO# EP520-5	2689.32				995.97
05/30/97	154165	PO# PARKINSON	537.25				537.25
05/30/97	154177	PO# EP-527-1	5709.60				2861.40
05/30/97	154252	PO#	201.79				5.75
07/25/97	158023	PO# NOAH	62.50				62.50
07/25/97	158024	PO# NOAH	5.81				5.81

REMARKS: 1
2
3

WRS MOTION PICTURE AND VIDEO LABORATORY WRS 102 (12/88)

STATEMENT DATE ACCUMULATED TOTALS	CURRENT	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE

TOTAL AMOUNT DUE
PLEASE PAY THIS AMOUNT

MEMBER
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NAPTE, SIVA, SMPTE, VSDA

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SIS. PAGE C-2

BEAR. PAGE C-4

BUSINESS EYE: PITTSBURGH INSPIRES BOTSWANAN. PAGE C-3

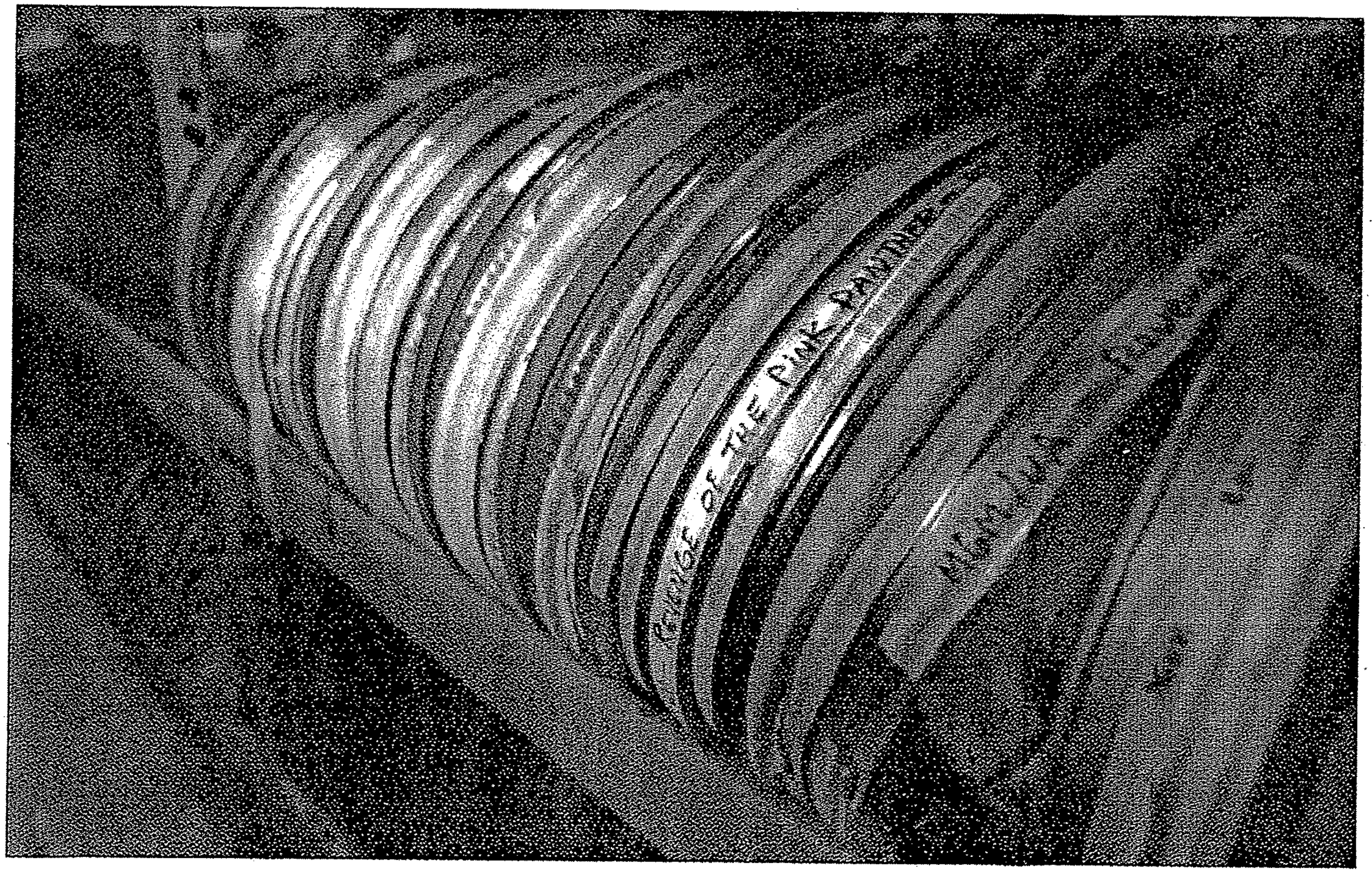
SHOP TALK: US AIRWAYS EXECS' FAT EXIT STRATEGY. PAGE C-3

BUSINESS

C SECTION

PITTSBURGH POST-GAZETTE ■ SUNDAY, AUGUST 26, 2001

EXHIBIT 2



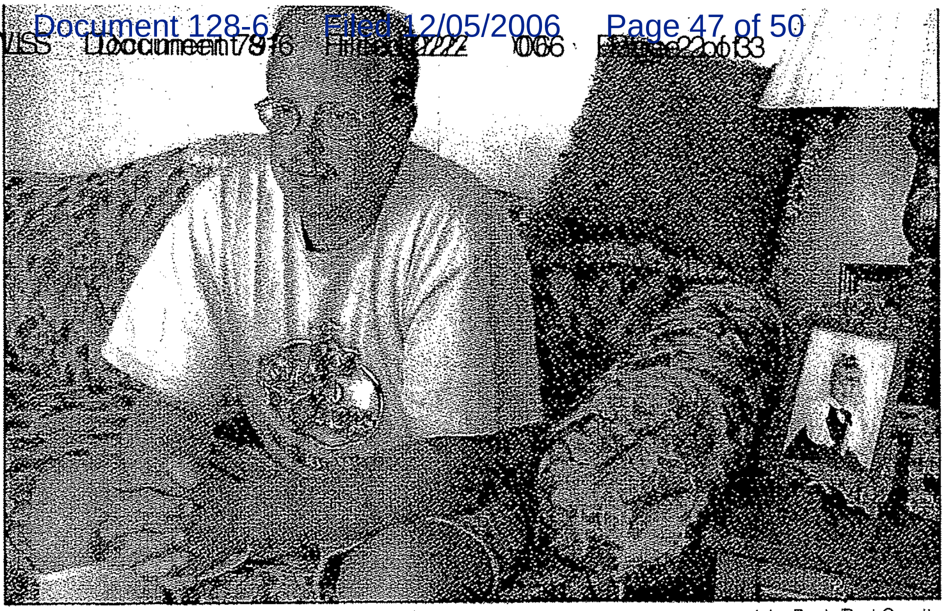
Bill Wade/Post-Gazette

Video and film reels are stored inside a vault at WRS Motion Picture and Video Laboratory in this 1997 photo. After the company's sudden shutdown earlier this month, filmmakers and producers are trying to obtain film they say is locked inside the company's vaults.

SURPRISE ENDING

NATIONALLY KNOWN CRAFTON FILM FIRM MEETS DEMISE AFTER 49 YEARS

By Stephanie Franken



John Beale/Post-Gazette

Bill Carl, a former worker at WRS Motion Picture and Video Laboratory, has contacted the U.S. Department of Labor after learning WRS had been deducting funds for its 401(k) plan but had not forwarded the funds to the proper destination.

On Thursday, Jack Napor stood before a federal judge in Pittsburgh, pleading his own case to regain control of the well-known film company he had run for the past 42 years. As he would later say, "I can't afford an attorney because I've lost everything."

Thirteen days ago, Napor resigned as president and chief executive officer of WRS Motion Picture and Video Laboratory, one of the few large film production and restoration companies outside Hollywood.

The Crafton-based company, with a payroll of $8 million and 240 employees, was one of the brightest stars of the Pittsburgh film industry, with customers such as Disney and Paramount and the original copy of films such as "Night of the Living Dead" stored in its airtight vaults.

And Napor, its longtime chief executive, was one of the leading figures in the local film scene. He was named 47th on a 1999 list of Pittsburgh's Top 50 Cultural Power Brokers by the Post-Gazette, for his position at WRS and for the thousands of dollars he gave to aspiring filmmakers in his mother's honor at the annual Laura Napor Film Grant Awards.

"They are — or were — one of the largest film labs in the country," said Dawn Keezer, director of the Pittsburgh Film Office. "They do really great work."

Abruptly this month, however, WRS fell apart. A slow economy combined with heavy debt led to a bank foreclosure and Napor's resignation. Within days, WRS had ceased operations, a bank-appointed crisis manager had stepped in to manage the company's assets, and employment had dropped to only a handful.

For those closely involved — Napor, former WRS employees and the Pittsburgh film community — the shutdown of WRS has been a traumatic lesson in how quickly a prominent enterprise can be reduced to court documents, creditors' claims and collateral equipment.

49-year climb, sudden fall

WRS was founded in 1952 by Warren R. Smith and funded in part by the late radio personality Rege Cordic. In 1958, a young Jack Napor was tapped to head the small company, then located in Oakland.

By the early 1960s, WRS faced financial problems, but Napor devised a plan to bring in new business: The company would sell blank film to high school sports teams and then develop the schools' tapes. That saved the company, and WRS became one of the largest sports film processors.

By 1988, the business had grown. The local offices moved to Crafton. Branch offices would open in Atlanta, Houston and Los Angeles. In addition to storing videos, WRS restored old movies, processed new films, converted film to video and stored hundreds of thousands of film reels in special climate-controlled vaults. The company's restorative work included "Raging Bull" and the "James Bond" and "Pink Panther" series.

Despite the high-profile work, however, financial problems grew as the economy slowed. Earlier this year, rumors circulated among workers about denied health-care claims. In July, Napor acknowledged in a letter to employees that Highmark Blue Cross Blue Shield had canceled coverage for nonpayment. And earlier this month, Napor told workers that the National Bank of Canada had foreclosed on a $4.4 million loan. WRS would go out of business.

The news was a shock to employees, many of whom had worked there for well over a decade. Feelings of loyalty soon turned to confusion and anger.

Facing unemployment in a slow economy and still awaiting their final paycheck, workers learned of additional surprises.

Money deducted from some of their paychecks for health insurance didn't reach the insurer; some money still was owed to 401(k) plans; and some funds garnisheed from paychecks for child support didn't reach the agency collecting it.

401(k) worries

"We've all got a life, rent, a mortgage," said former WRS worker Bill Carl, who contacted the U.S. Department of Labor after observing that WRS had fallen behind on 401(k) payments it was deducting from his paycheck.

Rochelle Thomas said she borrowed against her 401(k) to pay off a $1,300 credit

SEE **WRS,** PAGE C-10

TIMELINE OF WRS TURMOIL

- **JULY 13** — Employees of WRS Motion Picture and Video Laboratory first realize their company has grave financial problems when they receive a letter from President and Chief Executive Officer Jack Napor. The letter says an outside consultant, Parkland Group, has recommended that he step down to make way for a turnaround specialist and that he intends to do so. The letter also discusses problems the company is having collecting $4.7 million owed by customers, and Napor apologizes for WRS's loss of employee health insurance through Highmark Blue Cross Blue Shield.
- **AUG. 3** — Napor tells workers the company will close because it can't repay a $4.4 million loan to the National Bank of Canada.
- **AUG. 4** — 64 employees return to work to try to finish projects for customers. In the coming weeks, the number of workers will dwindle to fewer than 10.
- **AUG. 14** — Napor announces his resignation, saying he has been unable to find funding or reorganize the company. Joe Gerek and John Phillips are appointed interim chief executive officers, the Napor memo says. Phillips leaves the company shortly afterward.
- **AUG. 17** — U.S. District Judge Donald Ziegler rules in favor of the National Bank of Canada, which had filed a motion to place WRS in the hands of a "receiver" — a firm specializing in managing troubled companies.

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Film firm from Crafton meets demise after 49 years

WRS FROM PAGE C-1

card balance. She said WRS deducted her biweekly repayment to her 401(k) plan but did not forward the payments to Cigna, the administrator of the 401(k) plan.

Thomas said Cigna told her, "I either have to pay the loan back in full or let it default and pay taxes and penalties for the loan."

Carl and other workers interviewed have expressed their concerns and shown documents to Mike Piro of the U.S. Department of Labor. Piro, who investigates worker complaints, declined comment.

Court documents and an attorney close to the case echo the employees' 401(k) concerns.

"WRS failed to adequately fund its employees' 401(k) plan" by more than $70,000, according to a document filed in U.S. District Court in Pittsburgh by the National Bank of Canada, WRS's chief lender.

And attorney Stanley Levine, who represented WRS earlier this month, said he believes WRS owes about $75,000 to employee 401(k) accounts.

In a brief interview Friday night, Napor acknowledged that WRS owes workers for 401(k) payments.

"Those were some tough times," he said. "We were living hand-to-mouth, and our records just weren't accurate and good."

After heading WRS since 1958, Jack Napor resigned as president and chief executive officer earlier this month.

Earlier this month, the Post-Gazette faxed Napor a list of questions detailing employee concerns. Napor and Levine responded via e-mail. In the e-mail, Napor expressed "disappointment" at the questions and declined to respond to what he termed the "issues and perceptions" of the employees.

"The recent past has been very difficult for our company and our industry," Napor said in the response. "WRS has been struggling to pay its creditors, while seeking to implement various revenue enhancement and cost reduction initiatives."

Levine later said the 401(k) funds probably were used to pay suppliers and other creditors who were owed money. "I can assure you it wasn't taken out to supplement the pay of management," he said, adding that he believed that Napor had worked without pay for several months.

State of confusion

Although WRS provided basic medical coverage for its workers, it deducted funds directly from paychecks if employees had upgraded their insurance, or if workers had added family members to their plan.

Several workers' earnings statements showed that funds were deducted from their paychecks for health insurance through the end of July. But those funds stopped reaching Highmark in December.

As a consequence, Highmark started rejecting some claims in early 2001. The workers didn't get official notice from either WRS or Highmark that they had lost coverage until late July, however, when Highmark sent the workers letters that stated their health insurance was terminated, backdated to December.

Edmund Urbanus learned he was uninsured shortly after he had $25,000 heart surgery in February. He heard a rumor at WRS that some co-workers' medical bills were being returned to their doctors, unpaid. A phone call to Highmark confirmed his fears. "We were sort of panicking. We couldn't pay all these bills."

The WRS employees were "caught in a bad situation," said Highmark's Denise Grabner. "We haven't been paid anything since December, so Highmark had to cancel the workers' plans."

In a July letter to employees, Napor explained that he had tried to pay employees' health insurance many times but that the bank would not clear the checks. While that was happening, WRS unsuccessfully tried to find a replacement insurer.

But roughly two weeks after Highmark sent letters to WRS employees to tell them they had been without insurance for six months, the insurer gave them some good news. It said it would cover their medical bills through July.

Highmark was "doing the right thing" by paying claims for the uninsured workers, said Grabner, since WRS workers hadn't realized they had no insurance. Highmark also intends to give them certificates to help people with pre-existing medical conditions obtain new insurance.

However, yet another paycheck deduction problem surfaced in the area of child support.

Paul Darden is one of three former workers who said that some wages garnisheed for that purpose were deducted from their paychecks by WRS but never reached the agency that administers those checks and, as a consequence, never reached the children.

As a result, Darden said, he owes $1,500 in back pay for child support, even though his earnings statements show that WRS deducted funds for that purpose until the end of July.

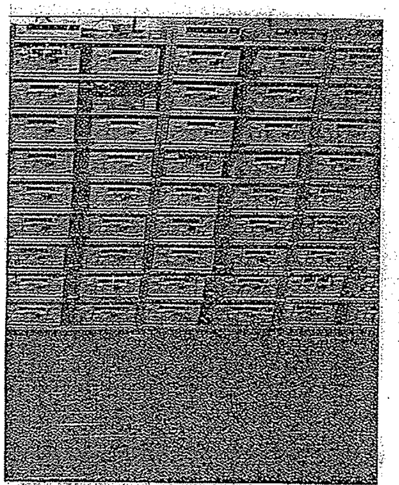
Napor acknowledged the child support problem in a brief interview Friday night but said he believes that the overdue payments have since been made.

Seeking resolution

Now in the bank's hands, WRS has a long list of creditors and customers who want their money or their film back.

"The independent and even commercial [film] community in Pittsburgh is really holding its breath right now, waiting to hear what the process will be for collecting the material that's stored in the vaults," said Pittsburgh Filmmakers Executive Director Charlie Humphrey.

They are unable to access the materials until new management appointed by the bank devises a



Bill Wade/Post-Gazette

A WRS video engineer adjusts some of the 2,000 videotape machines, which duplicate video in "real time," in this 1997 photo. The company was forced to shut down this month after the National Bank of Canada foreclosed on a $4.4 million loan.

plan to return film and other equipment in an orderly manner.

Local filmmaker Bernie Wodzinski said his three-year-long film project is tied up until he can get inside WRS to reclaim it. Wodzinski is making an independent film that chronicles a woman's midlife crisis and redemption. He cannot work on it until he retrieves materials stored at WRS. The film, he said, is "like my child, but the child has been kidnapped."

Also among those waiting to be reunited with their film is Russ Streiner, co-producer of "The Night of the Living Dead," the 1967 horror classic. The original version is stored at WRS.

"WRS was the centerpiece of the film community here," he said. "You could always count on them. Jack Napor has to be absolutely devastated. Jack's entire life was that lab."

Napor said he intends to fight the court order that ruled in favor of the National Bank of Canada and placed WRS into a receivership, under the direction of Chicago-based crisis management firm Alex D. Moglia and Associates. He further said that he hopes to see WRS enter Chapter 11 bankruptcy and gain protection from creditors so that it can be reorganized. Napor wants to avoid liquidation, which he believes is the bank's intention. Bank officials could not be reached for comment.

"In the best-case scenario, the receiver would be out of there, and we would be back in control," Napor said. "We would downsize and build on what's left."

His former employees, however, said they don't expect to return to a resuscitated WRS. Most are pursuing other jobs.

Urbanus is feeling well after his heart surgery, and he expects to see Highmark pay his $25,000 bill soon. For him, it's time to make a fresh start and get out of the film and video business.

"I'm going back to school for a master's degree in multimedia technology," he said. "I want to get as far away as I can."

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

WRS, INC., d/b/a WRS MOTION PICTURE LABORATORIES, a corporation, Plaintiff, v. PLAZA ENTERTAINMENT, INC., a corporation, ERIC PARKINSON, an individual, CHARLES BERNUTH, an individual, and JOHN HERKLOTZ, an individual, Defendants.	:	CIVIL ACTION NO. 00-2041

ORDER OF COURT

AND NOW, this ________ day of __________________, 2006, upon consideration of the foregoing Motion for Summary Judgment and Exhibits, the Supporting Brief and other evidentiary materials filed on behalf of Defendant John Herklotz, and upon oral argument, it is hereby ORDERED that such Motion is granted and summary judgment is entered in favor of Defendant Herklotz and against Plaintiff as to all Counts asserted against him.

BY THE COURT:

______________________________, J.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within **Motion for Summary Judgment or, Alternatively, Motion for Partial Summary Judgment** has been served on counsel listed below by electronic mail on this 24th day of February, 2006:

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